IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

ORDER

Ram Gopal Vs. Mangilal & others

S.B.CIVIL MISC. APPEAL NO.111/1993

Against award made by the Motor Accidents Claims Tribunal, Sirohi dated 24.02.1993 in Claim Case No.66/1990

Date of Order : 13th July 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.G.Vaishnawa for the appellant
Mr.S.K.Sankhla for the respondents

BY THE COURT:

This is a owner's appeal assailing the award made by the Motor Accidents Claims Tribunal, Sirohi dated 24.02.1993 in Claim Case No.66/1990 awarding a sum of Rs.90,000/- as compensation to the claimant-respondents No.1 to 7 on account of accident death of Saremal, father of claimants No.1 to 6 and husband of claimant No.7.

Brief facts relevant for determination of the questions involved in this appeal are that on 22.10.1989 at about 5.30 a.m. deceased Saremal riding his Lambretta Scooter bearing registration No. RJF 4084 while going from village Uthman to

Sheoganj was hit on the highway by an oncoming truck bearing registration No.RJQ 3833 owned by the non-applicant No.1 and driven by non-applicant No.2; Saremal sustained injuries and succumbed to the injuries on the spot. The claimants stated their claim for compensation with the submissions that the deceased was 59 ½ years of age at the time of accident and was engaged in land dealings and brokerage earning about Rs.1500/- per month and contributing to the family Rs.1100/- per month and would have contributed till the age of 75 years. The claimants made a claim in all for Rs.1,05,000/-, comprising of Rs.75,000/- towards pecuniary loss, Rs.23,000/- for non-pecuniary loss, Rs.2000/- towards funeral expenses and Rs.5000/- towards damage to the scooter. The non-applicants, owner and driver of the truck resisted the claim with the submissions that deceased while driving the scooter negligently hit the rear wheel of the truck causing accident and that the truck driver immediately put the breaks that resulted in capsizing of the truck. The Tribunal framed the following issues for determination of the questions involved in the case: -

> "(1) क्या दिनांक 22.12.89 को करीब 5.30 बजे अप्रार्थी संख्या 1 की ट्रक आर.जे.क्यू. 3833 को सिरोही शिवगंज हाईवे पर अरठवाड़ा व पोसालिया के बीच अप्रार्थी संख्या 2 रामलाल द्वारा तेज गति, लापरवाही, असावधानी व उपेक्षापूर्ण तरीके चलाते हुऐ मृतक सरेमल के व उसके स्कूटर के टक्कर मारी और उसकी मृत्यु कारित की ? प्रार्थी----

(2)क्या प्रार्थीगण क्लेम पद सं.11 में दर्शाये अनुसार रूपये 105000/- मुआवजा राशि पाने के अधिकारी है ? प्रार्थी----

(3)प्रतिफल ?

The claimants led oral and documentary evidence and inter alia examined AW-1 Mangilal, the claimant No.1; AW-4 Guman Singh, the alleged eyewitness to the accident; AW-5 Nainmal, another land dealer; and AW-6 Bhala Ram, Investigating Officer. The documentary evidence produced on record includes site inspection report Ex.2. The non-applicants did not lead any evidence.

After examining the evidence produced on record, learned Judge of the Tribunal found that the accident was caused by rash and negligent driving of the truck that left its lane and hit the scooterist on the wrong side despite having 25 feet wide road and enough space available to proceed in its own lane. On quantification of compensation, learned Judge took the age of deceased at 60 years and found that though the deceased was not having settled monthly income but was engaged in brokerage in the property dealings and in the circumstances of the case, estimated his annual contribution to the family at Rs.7000/- and adopted a multiplier of 10 on the basis of expected longevity and fixed the pecuniary loss at Rs.70,000/-. Another sum of Rs.17,000/- was allowed towards non-pecuniary loss comprising of Rs.5000/- as loss of

consortium to the wife and Rs.2000/- to each of the other claimant for loss of love, affection and guidance. Claim for funeral expenses was disallowed treating such expenses to be inevitable. However a sum of Rs.3000/- was allowed towards property damage of 1973 Model Lambretta Scooter. Accordingly, the Tribunal found the claimants entitled for an amount of Rs.90,000/- and made an award in that sum in favour of the claimants and allowed interest on the award amount at the rate of 12% per annum from the date of filing of claim application.

Assailing the award aforesaid, learned counsel Mr. G.Vaishnawa appearing for the appellants has strenuously contended that from the evidence on record, it is apparent that the deceased was riding his Scooter with muffled face in the winter month of October and the accident occurred at 5.30 a.m. in the morning on a highway road; that the truck turned turtle immediately after the incident that shows sudden application of breaks by the truck driver; there is no indication of any dragging by the truck of the scooter or the scooterist; that the Tribunal was seriously in error in relying upon the statements under Sec.161 Cr.P.C. Ex.17 and Ex.18 without the said witnesses having been examined; that Bhala Ram alleged eye-witness has not been cited as a witness in the criminal case and he is a made up witness; and the cumulative

effect of all the circumstances is that the deceased ought to have been held responsible for the accident and the claim application ought to have been rejected. Learned counsel submitted in the alternative that at any rate, contributory negligence of the deceased is apparent and the Tribunal has been seriously in error in fastening the entire liability on the truck driver. Learned counsel further assailed the quantum of compensation with the submissions that the Tribunal has been in error in adopting a multiplier of 10 in relation to the deceased 60 years of age and arbitrarily assessing his contribution at Rs.7000/- per month without any proof of income allegedly earned by the deceased and the award stands on much higher side and deserves to be modified.

Having given a thoughtful consideration to the submissions of the learned counsel for the appellants and having examined the record, this Court is satisfied that this appeal remains bereft of substance and deserves to be dismissed.

So far contribution to the accident is concerned, even if all other considerations adopted by the learned Tribunal are omitted and the evidence of Bhala Ram AW-4 and so also statements Ex.17 and Ex.18 are discarded, the fact nevertheless remains that the situation at site as given out in the site report Ex.2 makes it more than clear that the accident

had occurred exclusively for the fault of the truck driver. The deceased and his scooter are shown lying on their correct side i.e. left hand side of the direction the scooterist was proceeding to; obviously the truck hit him by intruding into wrong side; and the truck was obviously not being driven in a controlled manner as is apparent from the fact that it capsized after hitting the scooterist and is shown lying across the road but shifted to its wrong side. Moreover, the non-applicant no.2 truck driver was the best person to depose about the occurrence but the non-applicants chose not to lead any evidence at all. The suggestion that the scooterist hit rear wheel of the truck cannot be accepted; and all other suggestions about the scooterist committing some error for the alleged muffled face or on account of the timing of the accident deserve to be rejected for the truck driver having not been produced in evidence. On the contrary, an adverse inference is required to be drawn against the non-applicants. Cumulative effect of the material available on record and the material omitted to be made available on record is that the finding by the Tribunal holding the truck driver entirely responsible for the accident cannot be said to be unjustified or perverse and calls for no interference.

So far quantum of compensation is concerned, the claimants had been very reasonable in making a claim for

compensation at Rs.1,05,000/- while claiming only Rs.75,000/- towards pecuniary loss, Rs.23,000/- towards non-pecuniary loss, Rs.2000/- towards funeral expenses and Rs.5000/- towards property damage. It has been established on record that the deceased was engaged in some land dealing brokerage and having regard to the overall circumstances of the case, taking of a multiplicand at Rs.7000/- per annum as loss of contribution by the deceased representing a figure of about Rs.583/- per month remains rather on the lower side. The Tribunal has of course applied a multiplier of 10 but then, a multiplier of 8 could nevertheless be provided and when non-pecuniary loss figures are considered where the Tribunal has awarded merely Rs.5000/- to the wife and Rs.2000/- to each child, the said figure stands definitely on much lower side and deserves suitable enhancement. Then the Tribunal has wrongly disallowed funeral expenses. This Court is of opinion that in the net result a total award of Rs.90,000/- in favour of the claimants in this case cannot be said to be highly excessive; and on the contrary, the same remains on the lower side. In this view of the matter, there is no scope for interference in the award made by the Tribunal. Of course, interest has been allowed at 12% per annum but in the award made in the year 1993 such interest rate cannot be said to be unjustified; and as noticed above, in view of the compensation

amount having been awarded on the lower side, such interest rate also does not call for any interference.

As a result of the aforesaid, this appeal fails and is, therefore, dismissed. Parties are left to bear their own costs.

(DINESH MAHESHWARI),J.

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